

STATE OF CALIFORNIA  
California Law Revision Commission

TENTATIVE RECOMMENDATION

*relating to*

CREDITORS' REMEDIES

*Revival of Junior Liens Where Execution Sale Set Aside*

*Enforcement of Judgment Lien on Transferred Property  
After Death of Transferor-Debtor*

July 1988

*This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature in 1989. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.*

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN SEPTEMBER 30, 1988.

*The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.*

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

## LETTER OF TRANSMITTAL

The Enforcement of Judgments Law was enacted on Commission recommendation in 1982. (See Code Civ. Proc. §§ 680.010-724.260; *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980).) Several matters have come to the attention of the Commission in recent years suggesting the need for some technical revisions.

This tentative recommendation proposes revisions to clarify the statutes relating to actions to set aside execution sales and enforcement of liens on property transferred to another person before a judgment debtor's death.

The explanatory text of this tentative recommendation sets out the background of this proposal. A comment follows each section of the proposed legislation.

## Tentative Recommendation

Relating to

## CREDITORS' REMEDIES

Revival of Junior Liens Where Execution Sale Set Aside

When property is sold to enforce a money judgment, generally the sale is absolute and there is no right of redemption.<sup>1</sup> The creditor's lien and all junior liens on the property sold are extinguished by the sale.<sup>2</sup> However, if the judgment creditor purchases the property at the sale held to satisfy its judgment, the sale may be set aside if it is improper.<sup>3</sup> This is a limited right, and an action to set the sale aside must be commenced within six months of the sale.

Existing law does not deal with the question of what happens to the liens that are extinguished by the sale in a case where the sale is later set aside. The Commission concludes that junior lienholders should be restored to their former positions as if the sale had not occurred. The impropriety of the sale should be charged to the judgment creditor, and not to junior lienholders.

Time for Setting Sale Aside

The Commission also recommends that the six-month period for bringing an action to set aside the sale<sup>4</sup> be shortened to 60 days. The six-month period is unnecessarily long, particularly as applied to

---

1. See Code Civ. Proc. § 701.680.

2. Code Civ. Proc. § 701.630.

3. Code Civ. Proc. § 701.680(c).

4. Code Civ. Proc. § 701.680(c)(1).

real property sales. Because of the cloud on title resulting from the debtor's right to bring an action to set aside the sale, the creditor who purchases the property at the sale may not be able to resell the property and actually satisfy the outstanding money judgment. The statute already requires a delay of 140 days between levy and sale of real property.<sup>5</sup> This should be adequate time to discover any defects in the proceedings up to the time of sale and the 60-day period should be sufficient time after sale. This revision would not affect the debtor's remedy of suing for damages caused by the improper levy or sale.<sup>6</sup>

**Enforcement of Judgment Lien on Transferred Property**  
**After Death of Transferor-Debtor**

The Commission recommends that the Enforcement of Judgments Law be revised to clarify the procedure for enforcing a judgment lien on real property that has been transferred subject to the lien and the transferor dies after the transfer. There is a gap in the statute. The Enforcement of Judgments Law deals with enforcement of a judgment lien on property that has been transferred, but only while the debtor is still alive. After the death of the judgment debtor, enforcement of the judgment is governed by the Probate Code.<sup>7</sup> The Probate Code deals with enforcement against property "in the estate."<sup>8</sup> Property transferred subject to a lien before the debtor's death is not property in the decedent's estate. It is assumed that the creditor could bring an equitable action to foreclose the lien on the property in the hands of the transferee,<sup>9</sup> although the statute is silent on the point.

---

5. See Code Civ. Proc. §§ 701.540 (20-day notice of sale), 701.545 (120-day delay of notice of sale of real property).

6. See Code Civ. Proc. § 701.680(c)(2).

7. Code Civ. Proc. § 686.020.

8. See Prob. Code §§ 9300.

9. See *Hibernia Sav. & Loan Soc'y v. London & Lancashire Fire Ins. Co.*, 138 Cal. 257, 259, 71 P. 334 (1903).

The law should be clarified. The creditor should be able to use all remedies appropriate to enforcement against property under the control of a third person.<sup>10</sup> The same rules should apply to both real and personal property, although the need to enforce a lien against transferred property is most likely to arise with regard to real property.

The Enforcement of Judgments Law would be revised to provide that the Probate Code procedures apply only to property in the decedent's estate. Hence, the normally available enforcement procedures would continue to apply to property transferred subject to an enforcement lien.

---

10. These remedies include enforcement by writ of execution, by an equitable action to foreclose the lien, or by any other applicable procedure provided by the Enforcement of Judgments Law.

### Proposed Legislation

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 686.020, 695.070, and 701.680 of the Code of Civil Procedure, relating to creditors' remedies.

*The people of the State of California do enact as follows:*

#### Code of Civil Procedure § 686.020 (amended). Enforcement of judgment after death of judgment debtor

686.020. After the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor's estate is governed by the Probate Code.

Comment. Section 686.020 is amended for conformity with the scope of the Probate Code provisions relating to enforcement of judgments. See Prob. Code §§ 9300-9304, 9391. As a consequence, property transferred subject to an enforcement lien before the death of the judgment debtor may be applied to the satisfaction of a money judgment as if the judgment debtor had not died. See Section 695.070 (enforcement of lien after transfer).

#### Code of Civil Procedure § 695.070 (amended). Property subject to lien after transfer

695.070. (a) Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property remains subject to the lien after the transfer or encumbrance, the money judgment may be enforced against the property in the same manner and to the same extent as if it had not been transferred or encumbered, except that exemptions do not apply to transferred property.

(b) If the judgment debtor dies after the transfer of property that remains subject to a lien created under this division, the money judgment may be enforced against the property as provided in subdivision (a).

Comment. Section 695.070 is amended to clarify the manner of enforcement of a money judgment against property of a decedent in a situation where the property was transferred during the judgment debtor's lifetime subject to an enforcement lien. For provisions relating to continuation of liens after transfer, see Sections 697.390 (judgment lien on real property), 697.610 (judgment lien on personal property), 697.720-697.750 (execution lien), 697.920 (other liens).

Under subdivision (b), the judgment creditor may enforce the money judgment against the transferred property after the judgment debtor's death using any appropriate procedure available before death. Thus, the death of the judgment debtor has no effect on the judgment creditor's remedies against property that was transferred subject to an enforcement lien. The judgment creditor may use a writ of execution, any other applicable enforcement procedure provided in this division, or an action against the owner of the property to foreclose the lien. Enforcement under this section may proceed only against the property subject to the lien and only in the amount of the lien on the transferred property, as is the case when enforcing a lien on transferred property while the judgment debtor is alive. See Sections 695.210 (amount required to satisfy judgment), 697.010 (amount of lien). As to enforcement of a judgment against property in the decedent's estate, see Code Civ. Proc. § 686.020 (enforcement against property in deceased judgment debtor's estate governed by Probate Code); Prob. Code §§ 9300-9304 (enforcement of claims established by judgment).

The provision relating to the unavailability of exemptions is added at the end of subdivision (a) to avoid any implication that the judgment debtor may claim an exemption for property that has been transferred.

**Code of Civil Procedure § 701.680. Sales absolute; exception**

701.680. (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) The judgment debtor, or the judgment debtor's successor in interest, may commence an action within ~~six months~~ 60 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor. Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made. Any liens extinguished by

the sale of the property are revived and reattach to the property with the same effect as if the sale had not been made.

(2) The judgment debtor, or the judgment debtor's successor in interest, may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

(d) For the purposes of subdivision (c), the purchaser of the property at the sale is not a successor in interest.

Comment. Subdivision (c)(1) of Section 701.680 is revised to provide for the reattachment of liens on property sold at an execution sale that is later held to be improper. In this case, the liens that were extinguished by operation of Section 701.630, including the lien of the judgment creditor sought to be satisfied by the sale, are revived and reattach to the property as if the execution sale had not taken place. Other things being equal, revived liens attach in the amounts and with the priority that they would have had if not extinguished by the sale under the superior lien of the judgment creditor.

Subdivision (c)(1) is also amended to shorten the time for bringing an action to set aside the sale from six months to 60 days.